

**REMARKS**

Favorable reconsideration of this application is respectfully requested in view of the following remarks.

By this Amendment, independent Claim 38 is added. Thus, Claims 18-38 are now pending in this application. Claims 18, 27 and 38 are the only independent claims. No new matter is added.

Applicants appreciate the courtesies shown to Applicants' representative by the Examiner during the April 21, 2011 telephone interview. The reasons warranting favorable action discussed during the interview are incorporated into the following remarks and constitute Applicants' separate record of the interview.

The Office Action rejects Claims 18-37 under 35 U.S.C. §103(a) based on International Patent Application Publication No. WO 00/56612 A1 to Odet in view of U.S. Patent Application Publication No. 2001/0054616 A1 to Ramsey et al. ("Ramsey"). The rejection is respectfully traversed.

With respect to independent Claims 18 and 27, Odet discloses an opening arrangement for a packaging container. The arrangement has a mechanical connecting member 2 attached to a membrane 19 which covers an opening 17 in a wall 16 as shown in Fig. 2 of the reference. The Official Action believes the connecting member 2 corresponds to the claimed rigid plate, and that the membrane 19 corresponds to the claimed pull-tab.

The Official Action acknowledges that Odet's arrangement does not have the claimed removable portion. In an attempt to remedy this deficiency, the Official Action refers to Ramsey's removable section 15 illustrated in Figs. 1 and 2 of that reference. The Official Action takes the position that Ramsey's removable section 15 corresponds to the claimed removable portion, and that it would have been obvious

to one of ordinary skill in the art to include Ramsey's removable section 15 in connection with the membrane 19 shown in Fig. 2 of Odet.

As discussed during the interview, however, one skilled in the art would not have found it obvious to include Ramsey's removable section 15 in Odet's arrangement. Rather, Ramsey's disclosure would have directed one skilled in the art *against* making such a modification. In particular, Ramsey states in paragraph [0022] that the removable section 15 should include a free region 16 that is left uncovered as shown in Fig. 2 of the reference. One reason for this free region 16 is to reduce the tendency of the removable section 15 to delaminate in response to a pulling force acting on the removable section 15 via the tab 9 as discussed in paragraph [0025] of Ramsey. As shown in Fig. 2 of Ramsey, the free region 16 allows the formation of hinge lines 17 and 18. As discussed during the interview, these hinge lines 17 and 18 help the removable section 15 easily separate from the pre-scored track 14 attaching the removable section 15 to the carton wall, as opposed to delaminating (see paragraph [0025] of Ramsey).

Accordingly, if Odet's arrangement was modified to include Ramsey's removable section 15, the removable section 15 would be completely covered by Odet's membrane 19 (the claimed removable portion *completely covers the through hole* and Ramsey's removable section 15 appears to do the same). In this regard, the tendency of the removable section 15 to delaminate in Odet's modified arrangement would be undesirably increased as discussed during the interview. Thus, one skilled in the art would not have desired to modify Odet's arrangement to include Ramsey's removable section 15 as stated by the Official Action.

Moreover, MPEP §2143.01(V) points out that if the "proposed modification would render the prior art invention being modified unsatisfactory for its intended

purpose, then there is no suggestion or motivation to make the proposed modification" (citing *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984)). Thus, it is improper for an Examiner to reject a claim based on a modification of a prior art device that renders the device unsatisfactory for its intended purpose. In other words, if the stated modification renders Odet's opening arrangement unsatisfactory for its intended purpose, the stated modification is not *prima facie* obvious.

Here, the stated modification would render Odet's opening arrangement unsatisfactory for its intended purpose, a result contrary to MPEP §2143.01(V). As discussed above and during the interview, the tendency of the removable section 15 to delaminate in Odet's modified arrangement would be undesirably increased. In this regard, the Official Action fails to consider Ramsey as a whole as required by MPEP §2141.02(I) and §2141.02(IV). Accordingly, the Official Action has failed to establish a *prima facie* case of obviousness for at least this additional reason.

Further, it is unclear whether Odet's membrane 19 would even be physically capable of removing the removable section 15 from a pre-scored track such as Ramsey's pre-scored track 14. For example, it is unclear whether Odet's membrane 19 is strong enough to detach the removable section 15 from a pre-scored track.

For at least the reasons discussed above, it would not have been obvious to modify Odet's arrangement to include Ramsey's removable section 15 as stated by the Official Action. Therefore, the combination of Odet and Ramsey would not have rendered obvious the combination of features recited in independent Claims 18 and 27, including the claimed removable portion.

One benefit of the claimed configuration is that the rigid plate and the free, unsealed end of the pull-tab are removed before the removable portion covering the through hole is removed. Accordingly, removal of the pull-tab from around the

opening is more gradual and smooth as compared to the devices in Odet and Ramsey. Because in Odet the connecting member 2 is directly attached to the membrane 19, the opening force required is sudden and relatively high, which increases the risk of spilling contents in the container. Ramsey suffers from the same drawback. Ramsey's disc-like panel 10 is directly attached to the removable section 15.

Claims 19-26 and 28-37 are patentable over Odet and Ramsey at least by virtue of their respective dependence from the patentable independent claims. Thus, a detailed discussion of the additional distinguishing features recited in these dependent claims is not set forth at this time. Withdrawal of the rejection is respectfully requested.

Independent Claim 38 is presented for consideration and recites that the rigid plate is connected integrally to the frame by breakable strips of connecting material, the breakable strips being parallel to each other and to the opening direction of the pull-tab.

In Odet, bridges 21 (said to correspond to the claimed breakable strips) are oriented *orthogonal* to the opening direction as shown in Figs. 3 and 4 of Odet. Further, Ramsey fails to cure this deficiency of Odet. Thus, independent Claim 38 is patentable over Odet and Ramsey for at least these reasons, as well as for those discussed above.

Should any questions arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application the undersigned respectfully requests that he be contacted at the number indicated below.

The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17 and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date : April 22, 2011

By: /David R. Kemeny/  
Matthew L. Schneider  
Registration No. 32814

David R. Kemeny  
Registration No. 57241

**Customer No. 21839**

703 836 6620